

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS**

GENERAL ORDER AMENDING LOCAL RULES

It is hereby ORDERED that the following amendments to the local rules, having been approved by the judges of this court, are adopted for implementation subject to a reasonable period for public notice and comment to be determined by the clerk.¹ See 28 U.S.C. § 2071(b).

1. LOCAL RULE CV-3 Commencement of Action

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(b) Page Limitations for Petitions for a Writ of Habeas Corpus and 28 U.S.C. § 2255 Motions. ~~Absent permission for the presiding judge leave of court, all documents filed by *pro se* prisoners and *pro se* non-prisoners are limited to twenty pages, including attachments~~ 28 U.S.C. §§ 2241 and 2254 habeas corpus petitions and 28 U.S.C. § 2255 motions and the initial responsive pleadings thereto, shall not exceed thirty pages in non-death penalty cases, and one hundred pages in death penalty cases, excluding attachments. Replies and sur-replies, along with all other motions and responses thereto, shall not exceed fifteen pages in length in non-death penalty cases and thirty pages in length in death penalty cases, excluding attachments. All documents that exceed ten pages in length shall include a table of contents and table of authorities, with page references. Such tables and certificates of service and conference of counsel shall not be counted against the indicated page limit.

(c) Page Limitations in Civil Rights Lawsuits. Absent leave of court, complaints and the initial responsive pleadings thereto filed in civil rights proceedings shall not exceed thirty pages, excluding attachments. All documents that exceed ten pages in length shall include a table of contents and table of authorities, with page references. Such tables and certificates of service and conference of counsel shall not be counted against the indicated page limit.

Comment: These two new sections, which were suggested by a judge and several staff attorneys

¹ New language appears in underlined text, and deleted language appears in ~~strikeout~~ text.

who work on “regular” habeas and death penalty habeas cases for the court, provide page limitations and other guidance.

2. LOCAL RULE CV-5 Service and Filing of Pleadings and Other Documents

- (a) **Electronic Filing Required.** Except as expressly provided or in exceptional circumstances preventing a Filing User from filing electronically, all documents filed with the court shall be electronically filed in compliance with the following procedures.

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(7) Sealed Documents

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(C) Documents requested or authorized to be filed under seal or *ex parte* shall be filed in electronic form. Service in ‘electronic form’ shall be of documents identical in all respects to the document(s) filed with the court; service copies shall not include encryption, password security, or other extra steps to open or access unless the same are found in the document as filed. All sealed or *ex parte* documents filed with the court must comply with the file size and other form requirements of Local Rules CV-5(a) and CV-7. Counsel is responsible for serving documents under seal to opposing counsel and may do so in electronic form. Counsel is also responsible for complying with Local Rule CV-5(a)(9) regarding courtesy copies of filings. When a sealed order is entered by the court, the clerk will send a sealed copy of the order only to the lead attorney for each party who is responsible for distributing the order to all other counsel of record for that party. *See* Local Rule CV-11.

Comment: The change to LR CV-5(a)(7)(C) is in response to a growing trend where counsel of record e-mails opposing counsel service copies of sealed documents encrypted with a password that is sent by a separate e-mail. The rule is intended to ensure that opposing counsel is served with a document that is identical to the one that is filed with the court.

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(9) **Paper Copies of Lengthy Documents** If a document to be filed electronically exceeds ~~five~~ ten pages in length, including attachments, a paper copy of the filed document must be sent contemporaneously to the presiding judge's chambers. A copy of the "Notice of Electronic Filing" must be attached to the front of the paper copy of the document that was electronically filed. The paper copy should be sent directly to the judge's chambers and not to the clerk's office. *See* Local Rule CV-10(b) (regarding tabs and dividers for voluminous documents). Judges may opt out of this rule by entering an order. Such orders can be found on the court's website, located at *www.txed.uscourts.gov*.

Comment: The default page limit for paper courtesy copies has been increased to documents exceeding ten pages in length. Several judges have opted out of the courtesy copy requirement.

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(b) **Filing by Paper.** When filing by paper is permitted, the original pleadings, motions, and other papers shall be filed with the clerk.

~~(1) **Filing by After-Hours Depository.** The court maintains an after-hours document depositories at the courthouse in Tyler. Any pleadings or other documents that are marked received using the electronic time stamp contained in the depository and then placed in the box will be filed as of the time and date marked as received to the depository.~~

Comment: Pro se litigants ceased using the after hours document depository in Tyler. Consequently, we removed it and are doing away with the local rule that authorized its use.

3. LOCAL RULE CV-7 Pleadings Allowed; Form of Motions and Other Documents

(a) **Generally.** All pleadings, motions and responses to motions, unless made during a hearing or trial, shall be in writing, conform to the requirements of Local Rules CV-5 and CV-10, and shall be accompanied by a separate proposed order in searchable and editable PDF format for the judge's signature. Each pleading, motion or response to a motion must be filed as a separate document,

except for motions for alternative relief, e.g., a motion to dismiss or, alternatively, to transfer. The proposed order shall be endorsed with the style and number of the cause and shall not include a date or signature block. Motions, responses, replies, and proposed orders, if filed electronically, shall be submitted in “searchable PDF” format and shall not contain restrictions or security settings that prohibit copying, highlighting or commenting. All other documents, including attachments and exhibits, should be in “searchable PDF” form whenever possible.

Comment: See comment to the above amendment to LR CV-5(a)(7). One of the advantages of electronic documents is a user’s ability to electronically highlight and make notes. Judges and attorneys want to be able to retain these features.

4. LOCAL RULE CV-10 Form of Pleadings

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(e) **Hyperlinks.** Electronically filed documents may contain the following types of hyperlinks:

- (1) Hyperlinks to other portions of the same document;
- (2) Hyperlinks to PACER that contains a source document for a citation;
- (3) Hyperlinks to documents already filed in any CM/ECF database;
- (4) Hyperlinks between documents that will be filed together at the same time;
- (5) Hyperlinks that the clerk may approve in the future as technology advances.

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. A hyperlink, or any site to which it refers, will not be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site might be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

Comment: There is an increasing trend towards the use of hyperlinks in electronic documents. The attached rule is modeled after the Fifth Circuit local rule on hyperlinks. The Fifth Circuit is building an automated program that will automatically insert hyperlinks to legal authority and record materials into its briefs and other documents. Hyperlinks are a growing, potentially helpful trend, subject to the court's oversight and regulation.

5. LOCAL RULE CV-11 Signing of Pleadings, Motions, and Other Documents

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(e) **Change of Address.** Notices will be sent only to an e-mail and/or mailing address on file. A *pro se* litigant must provide the court with a physical address, i.e., a P.O. box is not acceptable, and is responsible for keeping the clerk advised in writing of the current physical address. *Pro se* litigants must include in this advisement of the case numbers of all pending cases in which they are participants in this district.

Comment: There have been consistent problems with *pro se* litigants who have P.O. boxes not responding to their mail. The amended rule requires a physical address, and that notice be provided for any change in physical address.

6. LOCAL RULE CV-12 Filing of Answers and Defenses

An attorney may, ~~by motion,~~ request that the deadline be extended for a defendant to answer the complaint or file a motion under Fed. R. Civ. P. 12(b). Unless otherwise ordered by the court, where the requested extension: (1) is not opposed; and (2) is not more than thirty days and does not result in an overall extension of the defendant's deadline exceeding forty-five days, the request shall be by application to the clerk, not motion. The application shall be acted upon with dispatch by the clerk on the court's behalf, and the deadline to answer or otherwise respond is stayed pending action by the clerk.

Comment: The word motion has been deleted, as it conflicted with the later instruction in the rule that "the request shall be by application to the clerk, not motion."

~~7. LOCAL RULE CV 45 Subpoena~~

~~Attorneys shall prepare all subpoenas. See FED. R. CIV. P. 45(a)(3).~~

Comment: This rule has been deleted because it conflicts with Fed.R.Civ.P. 45(a)(3), which permits a party – including a pro se party – to request signed but otherwise blank subpoenas from the clerk’s office, then prepare and serve them.

8. LOCAL RULE CV-72 Magistrate Judges

(a) Powers and Duties of a United States Magistrate Judge in Civil Cases. ~~The powers and duties of a United States magistrate judge serving within the Eastern District of Texas shall be governed by the Local Rules of Court for the Assignment of Duties to United States Magistrate Judges adopted by this court. See Appendix B. Nothing in this rule shall be construed to limit the jurisdiction of a United States magistrate judge serving in the Eastern District of Texas acting pursuant to powers directly~~ Each United States magistrate judge of this court is authorized to perform the duties conferred by Congress or applicable rule.

(1) Specific Duties. The duties a magistrate judge is authorized to perform include, but are not limited to, the following:

(A) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil cases;

(B) Accept petit jury verdicts in civil cases for a district judge;

(C) Upon consent of the parties, conduct any or all proceedings in a jury or non-jury civil matter, including the conducting of a trial, and enter final judgment in accordance with 28 U.S.C. §636(c);

(D) Issue any preliminary orders and conduct any necessary hearings or other appropriate proceedings in habeas corpus cases under §§ 2241, 2254 and 2255, and

submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the petition by the district judge²;

(E) Issue any preliminary orders and conduct any necessary hearings or other appropriate proceedings in all prisoner civil cases, and submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the case by the district judge;³

(F) Issue any preliminary orders and conduct any necessary hearings or other appropriate proceedings in all non-prisoner civil cases, and submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the case by the district judge⁴;

(G) Issue any preliminary orders and conduct any necessary hearings or other appropriate proceedings in all Social Security cases pursuant to 42 U.S.C. § 405(g), and submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of the case by the district judge;⁵

(H) Conduct proceedings for the collection of civil penalties of not more than \$200 assessed under the Federal Boat Safety Act of 1971, in accordance with 46 U.S.C. § 1484(d);

(I) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(J) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;

² The parties may consent to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c).

³ The parties may consent to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c).

⁴ The parties may consent to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c).

⁵ The parties may consent to final disposition by the magistrate judge pursuant to 28 U.S.C. § 636(c).

(K) Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

(L) Conduct extradition proceedings under 18 U.S.C. § 3184;

(M) Conduct proceedings pursuant to provisions of § 7402(b) and 7604(a) of Title 26 U.S.C. to judicially enforce Internal Revenue Service summons;

(N) Consider and rule upon applications for administrative inspection warrants and orders permitting entry upon a taxpayer's premises to effect levies in satisfaction of unpaid tax deficits;

(O) Perform the duties required by Local Rule CV-26(e) on "Discovery Hotline" calls.

(P) Conduct "Alternative Dispute Resolution" proceedings when assigned by a district judge.

(Q) Review civil *in rem* forfeiture suits filed by the United States, and if conditions for an action *in rem* appear to exist, enter orders so stating and authorizing warrants of arrest *in rem* and other appropriate initial orders.

(R) Perform any additional duty consistent with the Constitution and laws of the United States.

(b) ~~**Motion for Reconsideration of Objections to Nondispositive Matters — 28 U.S.C. § 636(b)(1)(A).** Any party may file a motion asking the district judge to reconsider an order of the magistrate judge made on any nondispositive matter under Rule 1, Subsection (C) of Appendix B to these rules. The motion for reconsideration must be filed within fourteen days after being served with a copy of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or the district judge. The motion for reconsideration shall specifically~~

~~designate the order, or part thereof, in which reconsideration is requested, and provide the basis for each objection. Any party may respond to another party's motion for reconsideration within seven days after being served with a copy of the motion. The district judge shall consider the motion and set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The district judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule. An objection to a magistrate judge's order made on a non-dispositive matter shall be specific. Any objection and response thereto shall not exceed five pages. Any replies or sur-replies shall not exceed three pages.~~

(c) Review of Case Dispositive Motions and Prisoner Litigation — 28 U.S.C. § 636(b)(1)(B).

~~Any party may file objections to a magistrate judge's report containing proposed findings and recommendations issued under Rule 1, Subsections (D), (E), or (F) of Appendix B to these rules. The objections must be filed within fourteen days after being served with a copy of the magistrate judge's report. The objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection. Any party may respond to another party's objections within fourteen days after being served with a copy of the objections. The district judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. In making a determination, the district judge, however, has discretion (unless otherwise required by law) to consider the record as developed before the magistrate judge or to conduct a new hearing, receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions. Objections to reports and recommendations and any response thereto shall not exceed eight pages; any replies or sur-replies shall not exceed four pages.~~

(d) Special Master Reports — 28 U.S.C. § 636(b)(2).

~~Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Fed. R. Civ. P. 53(f)(3). Assignment of Matters to Magistrate Judges. The method for assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a district judge.~~

(e) **Disposition of Civil Cases by Consent of the Parties - 28 U.S.C. § 636(c).**

(1) The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) The clerk shall not file consent forms unless they have been signed by all the parties or their respective counsel in a case. No consent form will be made available, nor will the contents be made known to any judge, unless all parties have consented to the reference to a magistrate judge. See Fed.R.Civ.P. 73(b); 28 U.S.C. 636(c)(2).

Comment: The new sections of this rule contain certain provisions from former Appendix B that relate to magistrate judge powers and duties in civil cases. New Local Rule CV-59 contains similar provisions from former Appendix B that relate to criminal cases.

9. LOCAL RULE CR-49 Service and Filing

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(b) Filing of Sealed Documents in Criminal Cases. Documents in criminal cases that are filed under seal pursuant to general order or rule of this court shall be filed under seal without need for a motion to seal or a certification by counsel. Other types of documents in criminal cases may not be filed under seal unless counsel certifies that: (1) a motion for leave to seal the document in question has been filed; or (2) the court has already granted authorization to seal. The following sealed criminal case documents must be filed electronically by the U.S. Attorney and the Federal Public Defender: sealed motions and responses, and objections to Presentence Investigation Reports. All other sealed documents in criminal cases, except for indictments, shall be filed with the clerk's office in CD-ROM format. *See* LOCAL RULE CV-5(a)(7) (filing sealed documents in civil cases).

Comment: The U.S. Attorney and Federal Public Defender in Tyler have been filing a number of sealed criminal documents with the clerk's office for almost a year. These documents include sealed motions and responses, and objections to Presentence Investigation reports. This project has been going well, so it should be expanded to the entire district. This will streamline the filing of these documents and minimize the number of sealed documents filed in the more cumbersome CD-ROM format.

10. **LOCAL RULE CR-55 Records**

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(b) **Disposition of Exhibits by Clerk.** ~~Thirty days after all direct criminal appeals and Section 2255 actions (if any) have been exhausted and/or the time for taking those appeals has lapsed and no further action is required by the trial court,~~ After providing notice to the parties, the clerk is authorized to destroy any sealed or unsealed exhibits ~~filed therein which have not been previously claimed by the attorney of record for the party offering the same in evidence at the trial.~~ The clerk ~~shall wait~~ eighteen months from either the date of the final judgment in the district court, if no appeal is filed, or the date that the direct criminal appeal process concludes. This will ensure that no § 2255 motion will be filed before destroying exhibits pursuant to this rule.

Sealed exhibits submitted in miscellaneous cases to obtain pen registers, wiretaps, etc. will be maintained in the court's vault for three years. At the end of this time, the sealed exhibits will be destroyed.

Comment: Extending the time for retaining exhibits in criminal and § 2255 cases is helpful. The notice provision ensures that no exhibits will be destroyed without the parties' knowledge.

11. **LOCAL RULE CR-59 Matters Before a Magistrate Judge**

(a) Powers and Duties of a United States Magistrate Judge in Criminal Cases. Each United States magistrate judge of this court is authorized to perform the duties conferred by Congress or applicable rule.

(1) Specific Duties. The duties a magistrate judge is authorized to perform include, but are not limited to, the following:

- (A) Conduct arraignments and take not guilty pleas. A magistrate judge can conduct *voir dire* in a criminal case when assigned by a district judge and with consent of the parties;
- (B) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;
- (C) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;
- (D) Conduct necessary preliminary proceedings leading to the potential revocation of probation;
- (E) Modify, revoke, or terminate supervised release or probation of any person sentenced to a term of supervised release or probation by a magistrate judge;
- (F) Conduct guilty plea proceedings in criminal felony cases with the permission of the presiding district judge and the signed consent of the defendant;
- (G) Conduct an evidentiary hearing, when designated by a district judge, to modify, revoke, or terminate supervised release and to submit proposed findings of fact and recommendations, including, in the case of revocation, a recommended sentence. (See 18 U.S.C. § 3401). Recommendations are to be submitted in accordance with 28 U.S.C. 636(b)(1)(B), enabling the district judge to make a *de novo* review.
- (H) Issue subpoenas, writs of habeas corpus *ad testificandum* or habeas corpus *ad prosequendum*, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(I) Perform any additional duty consistent with the Constitution and laws of the United States.

(b) Nondispositive Matters. A motion for reconsideration of a non-dispositive matter and any response thereto shall not exceed ten pages; any replies or sur-replies shall not exceed five pages.

(c) Dispositive Matters. An objection to a recommendation regarding a dispositive matter and any response thereto shall not exceed fifteen pages; any replies or sur-replies shall not exceed five pages.

(d) Assignment of Criminal Matters to Magistrate Judges. The method for assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court in criminal cases shall be made in accordance with orders of the court or by special designation of a district judge.

Comment: This new rule contains provisions of former Appendix B that related to the criminal case powers and duties of magistrate judges.

12. LOCAL RULE AT-1 Attorney Admissions

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~~(e) Absent an order of the court to the contrary, all active attorneys who are admitted to practice before this court shall be assessed an annual bar membership fee. State and federal government attorneys are exempted from paying the fee, however, as long as they are in government service. The fee will be collected triennially, with the amount to be determined by the court prior to each collection period. All attorneys who have not paid the fee by the deadline shall be suspended from practice without further order of the court. Upon payment of outstanding fees, any attorney suspended for non-payment of fees will be immediately reinstated without order of the court.~~

Federal Government Attorneys. No bar admission fees shall be charged to attorneys who work for the United States government, including Assistant U.S. Attorneys, Assistant Federal Public Defenders, and CJA Panel attorneys. Bar admission fees cannot be waived for federal law clerks.

however, as they do not appear in court on behalf of the United States but instead perform job duties that do not require admission to practice in the court. The clerk's office has no authority to waive bar admission fees for attorneys who work for state, county, or city governments.

Comment: Former section (e) has been deleted in light of current practice. The non-appropriated funds the court receives from *pro hac vice* admissions has eliminated the need to for an annual bar membership fee. In its place is a new section that acknowledges that federal government attorneys are not required to pay a bar admission fee. This is in conformance with the policy specified in the notes to 28 U.S.C. § 1914.

12. NOTICE – CONSENT TO DISPOSITION OF A CIVIL CASE BY A UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

**NOTICE
CONSENT TO DISPOSITION OF A CIVIL CASE
BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with Title 28 U.S.C., § 636(C), the parties may consent, by written request that "any or all proceedings in a jury or non-jury civil matter" may be conducted by a ~~full-time~~ magistrate judge. This civil jurisdiction includes entry of judgment at the conclusion of trial.

All ~~full-time~~ magistrate judges in the Eastern District of Texas have been specially designated to exercise jury or non-jury civil jurisdiction.

Appeal from judgment of the magistrate judge will be to the Fifth Circuit Court of Appeals in the same manner as an appeal from any other judgment of a district court.

When the plaintiff files a complaint, the clerk, as required by 28 U.S.C. § 636(c)(2), shall provide this notice. Forms for consent are available from the clerk. ~~Plaintiff shall complete the selected form at the time of filing or at any time within 10 fourteen days of such filing, and mail it directly to the clerk~~

Consent of the parties is voluntary and the parties are free to withhold consent without adverse substantive consequences. Consent to magistrate judge jurisdiction shall be communicated directly to the clerk of the United States district court. The district judge, upon receipt by the clerk of the consent of the parties, may then refer the civil case to the appropriate ~~full-time~~ magistrate judge.

Comment: The designation of the notice as part of former Appendix B has been removed. This document will now appear on the court’s web site under the caption of “Notice – Consent to Disposition of a Civil Case by a U.S. Magistrate Judge.”

13. JOINT FINAL PRETRIAL ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

_____ DIVISION

| | | |
|--------------|---|------------------------|
| _____ | * | |
| Plaintiff(s) | * | |
| | * | |
| v. | * | Civil Action No. _____ |
| | * | |
| _____ | * | |
| Defendant(s) | * | |
| | * | |

JOINT FINAL PRE-TRIAL ORDER

This cause came before the court at a pre-trial management conference held on _____, 20____, pursuant to Local Rule CV-16 and Rule 16 of the Federal Rules of Civil Procedure.

A. COUNSEL FOR THE PARTIES

Plaintiff(s):

Defendant(s):

B. STATEMENT OF JURISDICTION

(e.g., ““Jurisdiction in this case is based on diversity of citizenship under Title 28 U.S.C. § 1332;” “Jurisdiction in this case is based on Title 28 U.S.C. § 1331 in that the plaintiff brings this action under Title 46 U.S.C. § 688, the Jones Act””)

Jurisdiction is (not) disputed.

C. NATURE OF ACTION

(e.g., ““This is a products liability case wherein the plaintiff seeks damages for personal injuries sustained when he fell from the driver's seat of a forklift. The plaintiff contends that the forklift was defectively designed and manufactured by the defendant and that the defects were a producing cause of his injuries and damages.””)

D. CONTENTIONS OF THE PARTIES

(Note: The contentions of each party on those claims and issues approved for trial at the management conference shall be succinctly stated in a form suitable to be read to the jury.)

E. STIPULATIONS AND UNCONTESTED FACTS

F. CONTESTED ISSUES OF FACT AND LAW

G. LIST OF WITNESSES

(Note: Each party shall set forth a separate list of witnesses who (1) will be called to testify at trial; (2) may be called to testify at trial, and (3) may be presented by deposition testimony at trial. Those portions of the depositions that may be offered into evidence at trial shall be listed by page and line number.

H. LIST OF EXHIBITS

Counsel should fill out and submit to the Court an exhibit list containing the information in the form available on the court's website, located at www.txed.uscourts.gov , or at the clerk's office. ~~The list shall also include exhibits to be used solely for impeachment.~~

I. LIST OF ANY PENDING MOTIONS

J. PROBABLE LENGTH OF TRIAL

The probable length of trial is _____ days.

K. MANAGEMENT CONFERENCE LIMITATIONS

(Note: The parties shall set forth any limitations agreed upon or ordered by the court at or after the management conference set forth in Local Rule CV-16 such as a time limit on the length of trial, limitations on the number of experts a party may call, limitations on the length of video depositions, the use of deposition summaries, etc.)

L. CERTIFICATIONS

The undersigned counsel for each of the parties in this action do hereby certify and acknowledge the following:

- (1) Full and complete disclosure has been made in accordance with the Federal Rules of Civil Procedure and the Court's orders;
- (2) Discovery limitations set forth in the Federal Rules of Civil Procedure, the Local Rules, and the Court's orders have been complied with ~~and not altered by agreement or otherwise;~~

- (3) Each exhibit in the List of Exhibits herein:
- (a) is in existence;
 - (b) is numbered; and
 - (c) has been disclosed and shown to opposing counsel.

Approved as to form and substance:

Attorneys for Plaintiff(s)

Attorneys for Defendant(s)

(Note: An attorney of record may sign and certify this order on behalf of opposing counsel "with permission.")

This Joint Pre-Trial Order is hereby approved this ____ day of [month],[year].

United States District Judge

(Note: Where additional parties are joined or intervene pursuant to Rules 14, 19 and 24 of the Federal Rules of Civil Procedure, the style of the case and the various sections of the pre-trial order should be modified to reflect the additional parties and information pertaining to them.)

Comments: The designation of this form order as Appendix D has been removed. It will now appear on the court's web site under the caption of "form orders." The last sentence in Section H has been deleted because it conflicts with Fed.R.Civ.P 26(a)(3) and trial procedure orders used by some EDTX judges. The requirement in Section L(2) that parties certify they have not altered discovery limitations by agreement has been deleted because it impedes reasonable agreements permitted under some case management orders.

14. **LOCAL PATENT RULE 3-8**

3-8 Disclosure Requirements for Patent Cases Arising Under 21 U.S.C. § 355 (Hatch-Waxman Act).

The following provision applies to all patents subject to a Paragraph IV certification in cases arising under 21 U.S.C. § 355 (commonly referred to as “the Hatch-Waxman Act”). This provision takes precedence over any conflicting provisions in P.R. 3-1 to 3-5 for all cases arising under 21 U.S.C. § 355.

* * * * *

(e) Each party that has an ANDA application pending with the Food and Drug Administration (“FDA”) that is the basis of the pending case shall: (1) notify the FDA of any and all motions for injunctive relief no later than three business days after the date on which such a motion is filed; and (2) provide a copy of all correspondence between itself and the FDA pertaining to the ANDA application to each party asserting infringement, or set forth the basis of any claim of privilege for such correspondence, no later than seven days after the date it sends or receives any such correspondence.

Comment: Proposed section (e), like the original version of P.R. 3-8, is drawn from rules implemented by the District of New Jersey to deal with recurring issues unique to Hatch-Waxman litigation. This change will help ensure coordination between related FDA proceedings and the district court litigation, and also avoid a recurring discovery issue regarding the production of correspondence to and from FDA both prior to and during the litigation.

15. LOCAL RULE APPENDIXES A - P

Comment: Only a few of the current appendixes contain rules of procedure. Most of them fall into three categories: orders, forms and plans/policies. It would minimize confusion by categorizing them as such rather than as rule appendixes. The Committee therefore recommends the following actions:

- Appendix A Order Regarding Judicial Misconduct or Disability Complaints. Although this also is a general order, it should appear on the court’s website under the Complaints of Judicial Misconduct or Disability category. *Recommendation:* delete the designation of this document as Appendix A.
- Appendix B Local Rules of Court for the Assignment of Duties to United States Magistrate Judges. Much of this document is a compendium of magistrate judge duties that can be found in the U.S. Code statutes. There are parts of the appendix, however, that qualify as genuine rule provisions. They have been added to revised Local Rule CV-72 and a new Local Rule CR-59 regarding magistrate judges. *Recommendation:* delete the designation as Appendix B. Any residual portions of this document that qualify as local rule provisions have been added to Local Rules CV-72 and CR-59.
- Appendix C Civil Cover Sheet. This is a form and should be categorized as such on the court’s website. *Recommendation:* delete the designation as Appendix C and place under a “forms” directory for the attorneys.
- Appendix D Joint Final Pretrial Order. This is a form and should be categorized as such on the court’s website. Proposed revisions to this document are attached above. *Recommendation:* delete the designation as Appendix D and place under a “form orders” directory for attorneys.
- Appendix E Plan for Random Selection of Jurors. This is a plan/policy and should be categorized as such. *Recommendation:* delete the designation as Appendix E, and place under a “court policies” directory on the website.
- Appendix F Plan for Achieving Prompt Disposition of Criminal Cases. This is a plan/policy and should be categorized as such. *Recommendation:* delete the designation as Appendix F, and place under a “court policies” directory on the website.
- Appendix G Criminal Justice Act Plan. This is a plan/policy and should be labeled as such on the court’s website. *Recommendation:* delete the designation as Appendix G, and place under both a “CJA resources” directory and a “court policies” directory on the website.

- Appendix H Court-Annexed Mediation Plan. This is a plan/policy and should be labeled as such on the court’s website. *Recommendation:* delete the designation as Appendix H and place under a “court policies” directory on the website.
- Appendix I Plan for Reimbursement of Attorney Expenses in Civil Cases. This is a plan/policy, and should be labeled as such on the court’s website. *Recommendation:* delete the designation as Appendix I, and place under a “court policies” directory on the website.
- Appendix J Local Admiralty Rules. This is a rule appendix, and should retain that designation. *Recommendation:* identify this document as Appendix A.
- Appendix K Uniform Application to Appear Pro Hac Vice. This is a form and should be categorized as such on the court’s website. *Recommendation:* delete the designation as Appendix K, and place under a “forms” directory and an “attorney admission” directory on the website.
- Appendix L Sample Scheduling Order. This is a form order that has not been in use for a number of years. *Recommendation:* delete this document.
- Appendix M Patent Rules. This is a rule appendix and should retain that designation. *Recommendation:* reclassify this document as Appendix B.
- Appendix N Policy on Possession and Use of Electronic Devices. This is a plan/policy and should be labeled as such. *Recommendation:* delete the designation as Appendix N, and place under a “court polices” on the website.
- Appendix O Plan for the Administration of Non-Appropriated Funds. This is a plan/policy and should be labeled as such. *Recommendation:* delete the designation as Appendix O, and place under a “court policies” directory on the website.
- Appendix P. Order Regarding E-Discovery in Patent Cases. This is a form order and should be identified as such. *Recommendation:* delete the designation as Appendix P, and place in a “patent resources” directory and a “form order directory” on the court’s website.

The clerk of court is directed to conform/delete references in the local rules to the former rule appendixes to the new categorizations mentioned above.

Signed this 19th day of March, 2014.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
Chief Judge